

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-137

April 14, 2000

ENRON  
Request for Advisory Ruling Regarding  
Eligibility of a Certain Renewable Facility

ADVISORY RULING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Ruling, we conclude that the Municipal Solid Waste Resource Recovery Facility (Facility) in Bridgeport, Connecticut is an eligible facility under Maine statute and regulations, and that Enron Energy Services (EES) may rely on the obligation of the facility owner to comply with Connecticut law regarding recycling in meeting Maine's eligible resource requirement.

On February 16, 2000, EES filed a letter seeking an advisory ruling from the Commission as to whether a specific municipal solid waste facility in Connecticut is a facility eligible to meet Maine's 30% portfolio requirement under 35-A M.R.S.A. § 3210 and Chapter 311 of the Commission rules.<sup>1</sup> Advisory Rulings are governed by 5 M.R.S.A. § 9001 and Chapter 110, Part 6 of our rules. These provisions state that an advisory ruling is not legally binding, but that in any subsequent Commission action, justifiable reliance upon such a ruling shall be considered. Pursuant to Chapter 110 § 603, the General Counsel of the Commission has reviewed the EES letter and has recommended to the Commission that it issue an advisory ruling. In this Ruling, we simultaneously decide to issue an advisory ruling and issue the ruling itself.

In its February 16<sup>th</sup> letter, EES explained that it is considering energy from the Connecticut MSW facility to meet Maine's requirement. The facility is under 100 MW in nameplate capacity and is subject to Connecticut's recycling statutes. These statutes mandate that eleven specified materials be separated from the waste for recycling and not be incinerated with non-recycling waste. EES states that the Connecticut Department of Environment conducts periodic inspections to assure that the facility is not incinerating the recycling materials along with the other waste. EES notes that, although it is a purchaser of the facility's output, it has no rights to audit the facility's compliance with Connecticut law.

Maine law and regulation state that a generation facility with a nameplate capacity that does not exceed 100 MW and that is "fueled by municipal solid waste in conjunction with recycling" is eligible to satisfy the portfolio requirement. 35-A M.R.S.A.

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<sup>1</sup> Section 4 (E) of Chapter 311 specifically allows a competitive electricity provider to request an advisory ruling to determine whether a particular generation facility is an eligible facility under the rule. Pursuant to this provision, we invited comment on EES's request. No person commented on this matter.

§ 3210 (2)(C)(h); Ch. 311 § 4(A)(1)(b). According to EES's description, the Connecticut facility is fueled by municipal solid waste and it operates in conjunction with recycling. Therefore, based on the plain language of the statute and regulation, we conclude that the facility is eligible to satisfy Maine's portfolio requirement. We also conclude that EES may rely on the provisions in Connecticut law that require recycling and on the Connecticut Department of Environment's auditing responsibility as verification that the facility is an eligible resource under Maine law.

Dated at Augusta, Maine, this 14th day of April, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.